

## **OECA and Regional Report**

**Week Ending August 20, 2021**

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## Office of Criminal Enforcement, Forensics and Training

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Montana Man Sentenced for Unlawful Use of Strychnine to Poison Wolf

On August 12, 2021, Jeffrey Scott Wood pleaded guilty to the unlawful use of a registered pesticide in violation of FIFRA. Wood was sentenced to pay a \$500 fine and to pay \$1,000 restitution to the Montana Department of Fish, Wildlife and Parks. Wood unlawfully used strychnine in a manner inconsistent with its labeling to poison a wolf on the Sun Ranch, near Ennis, MT. An investigation into the death of the wolf determined that the wolf had ingested strychnine-laced oats rolled in meat. Wood initially denied to investigators that he had any involvement in the wolf's death, then admitted he put out the poison to kill wolves. Wood also called a witness and said to "play stupid" if anyone asked questions about the dead wolf. Additionally, a ranch employee's pet dog was suspected of dying from ingesting the strychnine. Contact: SAC Lance Ehrig 303-312-6459.

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## Region 1

### Regular Highlights:

#### **Enforcement and Compliance Assurance Issues**

##### **CAA Immediate Compliance Order Issued to Town of Jamestown, RI**

On August 13, 2021, EPA issued an Immediate Compliance Order under Section 113(a)(3) of the Clean Air Act (CAA) to the Town of Jamestown, Rhode Island. The Town of Jamestown was cited for failing to provide EPA with notification at least ten days before demolition work began at the former Jamestown Golf Course Clubhouse located in Jamestown, Rhode Island. The order requires the Town of Jamestown to immediately comply with the CAA Asbestos National Emission Standards for Hazardous Air Pollutants (NESHAP). This action addresses violations involving the improper fire training and subsequent demolition of the clubhouse facility that took place in February 2021. No specific environmental justice issues were identified. The Rhode Island Department of Health is aware of and supportive of this action. Contact: Hugh Martinez, 617-918-1867; Jordan Alves, 617-918-1739.

##### **Region 1 Settles CWA Wetlands Case against Two CT Corporations [Docket No. CWA-01-2021-0076]**

On August 17, 2021, Region 1 filed an administrative Consent Agreement and Final Order resolving its claims against Patriot Marine LLC of New Haven, Connecticut and Coastal Consulting and Development LLC of Branford, Connecticut for alleged violations of Section 404 of the Clean Water Act (wetlands) occurring during the disposal of dredged material from the Annisquam River Federal Navigation Project into Gloucester Harbor and Ipswich Bay. Under the terms of the settlement, the company agrees to pay a \$ 42,000 penalty. The underwater area impacted is limited and, being marine waters significantly off-shore, there are no direct environmental justice communities affected. Also, no local environmental groups or other stakeholders have reached out to EPA to express concerns of this violation. Contact: Ray Putnam, 617-918-1523; Phil Colarusso, 617-918-1506; Steven Wolf, 617-918-1617; Tonia Bandrowicz, 617-918-1734; Laura Beveridge, 617-918-1345.

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## Region 2

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### CWA Administrative Compliance Order issued for violations at Construction Project in Rincón, PR

On August 12, 2021, Region 2 issued an administrative compliance order and request for information to Aurora's Dreams LLC and Bellagio LLC, the owner and operator respectively, of the Finca de Sueño Aurora single-family residential construction project in Rincón, Puerto Rico, for violations of CWA Sections 301(a) and 402(p). EPA found that Respondents conducted construction activities without complying with various conditions of the 2017 NPDES Construction General Permit (CGP) for Discharges from Construction Activities, resulting in the discharge of stormwater containing pollutants from the construction project into waters of the United States. The violations include, among others, failure to design and install stormwater controls in accordance with good engineering practices, and lack of stormwater and erosion controls, sediment track-out controls and soil stabilization measures. Also, EPA found that Aurora's Dreams LLC did not have NPDES permit coverage for the project's discharges from construction activities. The order requires the Respondents to submit a detailed plan of action addressing EPA's findings and describing corrective actions, the design and installation of stormwater controls for velocity dissipation, slope stabilizations, stormwater runoff collection, and for Respondent Aurora's Dreams LLC to file for NPDES CGP coverage, among others. EPA is the agency within the Commonwealth of Puerto Rico authorized to administer the federal NPDES program ORC contact: Suzette M. Meléndez-Colón, 787-977-5822. Program Contact: José Rivera, 787-977-5842.

##### Court Enters Cost Recovery Consent Decree for Frankfort Asbestos Superfund Site

On July 22, 2021, the U.S. District Court for the Northern District of New York entered a consent decree relating to the Frankfort Asbestos Superfund Site, located in Frankfort, Herkimer County, New York. The Decree is between the United States and Mr. Cross Nicastro and requires him to pay the United States \$135,000, of which \$105,000 is for past costs incurred by EPA at the Site and \$30,000 is for civil penalties, plus an additional sum for interest. Mr. Nicastro was convicted of criminal offenses in a parallel criminal filing related to this Site, and he has already paid approximately \$35,509 in restitution to EPA in accordance with its sentencing in that case. EPA is continuing its cost recovery efforts against certain remaining responsible parties at the Site. The Site, which is located on a dairy farm, included a pile of pulverized construction and demolition debris with an estimated volume of 10,000-16,000 cubic yards that contained asbestos-containing material, lead, and trace semi-volatile organic compounds. The material in the pile was illegally disposed of at the Site in 2006 as part of a criminal conspiracy, and it has since been addressed through a removal action. ORC contact: Jocelyn Scott, (212) 637-3179.

**EPA issues CAA Notice of Violation to Metal Shredding Facility in Brooklyn**

On August 11, 2021, EPA Region 2 issued a Notice of Violation to Brooklyn Resource Recovery, Inc. (“BRR”) pursuant to Section 113(a)(1) of the CAA. BRR is the owner and operator of a scrap metal recycling and shredding facility in Brooklyn, New York. EPA alleges that BRR is in violation of the New York State Implementation Plan (“NYSIP”) for failure to comply with New York’s Reasonably Available Control Technology for Major Facilities (“RACT”) regulations in connection with its actual emissions of volatile organic compounds (“VOC”), as well as its potential to emit VOC, in its metal shredding process. EPA also alleges that BRR did not obtain or maintain the required permits or federally enforceable permit conditions limiting emissions of VOC, in violation of the NYSIP and title V of the CAA. The NOV provides BRR an opportunity to confer about the alleged violations. ORC contact: Amanda Prentice, 212-637-3209. Program contact: Joseph Cardile, 212-637-4054.

**EPA issues CAA Notice of Violation to Metal Shredding Facility in Clifton, New Jersey**

On August 16, 2021, EPA issued a Notice of Violation to Parkway Iron & Metal, Inc. (“Parkway”) pursuant to Section 113(a)(1) of the CAA. Parkway is the owner and operator of a scrap metal recycling and shredding facility located in Clifton, New Jersey. EPA alleges that Parkway is in violation of the New Jersey State Implementation Plan (“NJSIP”) for failure to comply with New Jersey’s Reasonably Available Control Technology for Major Facilities (“RACT”) regulations in connection with its actual emissions of volatile organic compounds (“VOC”), as well as its potential to emit VOC, in its metal shredding process. EPA also alleges that Parkway did not obtain or maintain the required permits or federally enforceable permit conditions limiting emissions of VOC, in violation of the NJSIP and title V of the CAA. The NOV provides Parkway an opportunity to confer about the alleged violations. ORC contact: Amanda Prentice, 212-637-3209. Program contacts: Joseph Cardile, 212-637-4054; Sue Leung, 212-637-4061.

**EPA issues CAA Notice of Violation to Ritz Carlton St. Thomas, located in St. Thomas, U.S. Virgin Islands**

On August 16, 2021, EPA issued a Notice of Violation to Ritz Carlton St. Thomas, pursuant to Section 113(a)(1) of the Clean Air Act. EPA alleges that Ritz Carlton is in violation of U.S. Virgin Islands Rules and Regulations Air Pollution Control Title 12, Chapter 9, Subchapters 204 and 206, which are part of the federally enforceable CAA state implementation plan for the U.S. Virgin Islands, and is in violation of the facility’s CAA Title V permit due to Ritz Carlton’s: failure to timely submit semi-annual and annual compliance certifications; operation of one (1) additional generator and one (1) additional dryer without adding these units to the facility’s Title V permit; failure to maintain logs of fuel usage as required by its Title V permit; and failure to pay annual emissions fees. The NOV provides Ritz Carlton an opportunity to confer about the alleged violations. ORC contact: Jennifer A. Pierce, 212-637-3228. Program contact: Alex Rivera, 787-977-5845.

## Region 3

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### EPA issues General Objection to WVDEP's Draft Individual MS4 Permit for Berkeley County, WV

On August 13, 2021, EPA issued a general objection to the draft individual MS4 permit for Berkeley County due to numerous inconsistencies with the Clean Water Act and implementing regulations. EPA is concerned that the draft permit does not meet the requirements at 40 C.F.R. § 122.44(d)(1)(vii)(B) for consistency with applicable TMDLs; does not meet the requirements listed in 40 C.F.R. § 122.34 for regulated small MS4s; does not meet the requirements at 40 C.F.R. § 124.6 for draft permits; and the fact sheet does not comply with the requirements at 40 C.F.R. § 124.8. The general objection extends the time for EPA's review to ninety days, which will end on October 12, 2021. EPA plans to work collaboratively with WVDEP during that time to resolve EPA's concerns with the draft permit. Primary Contact: Kelly Gable, (215) 814-2471, Additional Contacts: Liz Ottinger, (215) 814-5783, Shana Stephens.

##### Third Circuit Court of Appeals Grants EPA's Motion for Voluntary Remand of EPA's Approval of Pennsylvania's SO2 Attainment Plan for the Indiana, PA Area. *Sierra Club et al., v. EPA*, Civ. No. 20-3568 (3<sup>rd</sup> Cir.)

In a succinct order dated August 17, 2021, the 3rd Circuit Court of Appeals granted EPA's motion seeking voluntary remand of EPA's approval of Pennsylvania SO2 Attainment Plan for the Indiana, PA SO2 nonattainment area (85 Fed. Reg. 66,240 (Oct. 19, 2020)). The Sierra Club and other parties filed a timely appeal of that approval in the 3rd Circuit. In accordance with the President's Executive Order on "Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis." 86 Fed. Reg. 7037 (Jan. 25, 2021), EPA reconsidered its approval and decided that voluntary remand was appropriate, and filed a motion seeking remand on April 5, 2021. Petitioner's opposed EPA's motion for remand.

The Court's order grants voluntary remand without vacatur, giving EPA 12 months from the date of the order to conclude the remand proceedings, while requiring the parties to file a status report 11 months from the date of the order. The court also retained jurisdiction for enforcement purposes. Region 3 will consult with DOJ and OGC to determine exactly what EPA must do within 12 months. Primary Contact: Doug Snyder, (215) 814-2692, Additional Contact: Dave Talley, (215) 814-2117.

##### Region 3 Issues Notice of Potential Violations and Opportunity to Confer to Packaging Manufacturer Essel Propack, Danville, VA, for Alleged RCRA Subtitle C Violations

On August 16, 2020, Region 3 ECAD Director signed a Notice of Potential Violations and Opportunity to Confer (NOPVOC) letter to Essel Propack America, LLC, (Essel Propack), located at 187 Cane Creek Boulevard, Danville, VA 19382 (the Facility). The NOPVOC letter alleged violations of RCRA Subtitle C regulations identified during Region 3's review Essel

Propack's response to an Information Request Letter (IRL Response), including supplemental submissions. The NOPVOC letter details specific noncompliance with EPA's authorized Virginia Hazardous Waste Management Regulations, including: i) failure to conduct weekly inspections of the Facility's hazardous waste accumulation area; ii) failure to provide annual review of initial hazardous waste training or maintain training documentation; iii) failing to timely submit Exception Reports and legible copy of the manifests subsequent to specific due dates relating to eight manifests; and, iv) failure to submit a required Biennial Report for calendar year 2019 by March 1, 2020. The primary environmental significance of this matter relates to noncompliance with important aspects of the hazardous waste management regulatory program applicable to hazardous waste generators. VADEQ has been provided notification of this RCRA enforcement matter. The area where the Facility is located, West Chester, PA, is not an identified as an underserved environmental justice community, Primary Contact: Kathleen Root, (215) 814-2684, Additional Contact: Jeremy Dearden, (215) 814-5351.

**ORC and LCRD Debrief States on Hazardous Waste Authorization Training**

On August 17, 2021, ORC and LCRD met with the Region 3 states as a follow-up to the two-day training held by Region 6 on July 12 and 13. During the follow-up meeting, RCRA attorneys and program staff clarified some issues raised during the Region 6 training and explained Region 3's specific process for reviewing and approving state hazardous waste programs. Representatives from DE, DC, PA, VA, and WV participated. Primary Contact: Hilda Burgos, (215) 814-2609, Additional Contact: Jacobine Dru, (215) 814-2606.

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## Region 4

### Regular Highlights:

#### **Enforcement and Compliance Assurance Issues**

##### **EPA enters into a CERCLA Settlement Agreement for Recovery of Past Response Costs with 84 Potentially Responsible Parties (PRPs), (Picayune, MS)**

On August 10th, the EPA executed a 122(h) Settlement Agreement for recovery of approximately \$200,000 of past response costs at the JCC Environmental Superfund Site in Picayune, Mississippi. The Settlement Agreement includes 84 PRPs (three that are Settling Federal Agencies). The Effective Date of the Settlement Agreement is anticipated to be August 19th, pending closure of the public comment period and EPA's review of any comments received. Settling PRPs' payment is due within 30 days of the Effective Date. The EPA conducted a fund-lead removal at the JCC Environmental Superfund Site in 2016 and no further response action is anticipated. Contacts: Graham Burkhalter, ORC, (404) 562-9519; Marianne Lodin, ORC, (404) 562-9547; Ray Strickland, EPM, (404) 562-8890.

##### **Region 4 Files a Consent Agreement and Final Order Resolving RCRA Violations with Reichhold LLC 2 in Jacksonville, FL**

On August 12, 2021, Region 4 entered into a Consent Agreement and Final Order (CAFO) with Reichhold LLC 2 (Respondent) to resolve Respondent's violations of RCRA at its facility in Jacksonville, Florida (Facility). Respondent produces unsaturated polyester and vinyl ester resins for composite applications at the Facility. On March 23, 2021, EPA and Florida Department of Environmental Protection (FDEP) inspectors conducted a compliance evaluation inspection (CEI) at the Facility. As a result of this CEI, EPA determined that Respondent had failed to perform weekly inspections of its less than 90-day hazardous waste container accumulation area. Pursuant to the terms of the CAFO, Respondent will pay a penalty of \$21,800. Since the inspection, Respondent has addressed the RCRA violation. Contacts: Rob F. Summers, ORC, (404) 562-9523; Daryl R. Himes, ECAD, (404) 562-8614.

##### **Region 4 Files Consent Agreement and Final Order with Oiles America Corporation for EPCRA violations (Concord, NC)**

On August 16, 2021, EPA entered into a Consent Agreement and Final Order (CAFO) with Oiles America Corporation (Oiles) to resolve alleged violations of EPCRA Sections 312 and 313. Specifically, EPA alleges that Oiles failed to file Form R for copper at its facility in 2017 in excess of the threshold reporting quantity, by the July 1, 2018 filing deadline. Similarly, Oiles failed to submit a completed Emergency and Hazardous Inventory Form listing lead and sulfuric acid, present at the facility in excess of the threshold reporting quantities in 2018, to the SERC, LEPC, and fire department by the March 1, 2019 deadline. Pursuant to the terms of the CAFO, Oiles agreed to pay \$7,153 to settle the alleged violations. Contacts: Lucia Mendez, ORC, (404) 562-9637; Stephen Rieck, ECAD, (404) 562-9177.



**Region 4 Ratifies Expedited Settlement Agreement with JH Diesel & 4x4, LLC in  
Bradenton, FL for CAA Violations**

On August 17, 2021, EPA entered into an Expedited Settlement Agreement with JH Diesel & 4x4, LLC (JH Diesel) to resolve alleged violations of the Clean Air Act. Specifically, EPA alleged that JH Diesel tampered with automobile emissions controls on thirteen Ford, GMC, Chevrolet, and Dodge vehicles from January 10, 2020 through February 25, 2020, in violation of Section 203(a)(3) of the Clean Air Act. JH Diesel agreed to pay a civil penalty of \$21,211. Contacts: JJ England, ORC, (404) 562-9489; Alecka Broner, ECAD, (404) 562-9186.

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## Region 5

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Region 5 Enters into a Consent Agreement and Final Order Resolving Violations of CERCLA Section 103 and EPCRA Section 304 by Toledo Refining Company, LLC, Oregon, OH

On August 17, 2021, Region 5 filed a Consent Agreement and Final Order (CAFO) with Respondent, Toledo Refining Company, LLC. Toledo Refining Company is a part of the Oil Refining Industry. It has 481 employees, over \$27 million in revenue, and processes light, sweet crude with a throughput capacity of 170,000 bpd. The majority of Toledo Refining Company's crude is delivered via pipelines that originate in both Canada and the United States. This facility is located in a community of potential environmental justice concern. The CAFO commences and concludes a proceeding identifying alleged violations of Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) based on Toledo Refining Company's failure to promptly notify the National Response Center (NRC), State Emergency Response Commission (SERC), and Local Emergency Planning Commission (LEPC) of a release of approximately 29 pounds of benzene, a known carcinogen, on August 5, 2020. Benzene is a CERCLA hazardous substance and an EPCRA hazardous chemical with a reportable quantity for releases of 10 pounds or more. Toledo Refining Company did not notify the NRC, SERC, and LEPC about the release until approximately 14 hours after the release occurred. Toledo Refining Company certifies in the CAFO that it is complying with Section 103 of CERCLA and Section 304 of EPCRA. Respondent will pay a penalty of \$61,536. Contacts: Robert H. Smith, Office of Regional Counsel, 312-886-0765, and James Entzminger, Superfund & Emergency Management Division, 312-886-4062.

##### Region 5 files a Consent Agreement and Final Order against Guardian Technologies LLC, located in Euclid, Ohio, for import shipments that entered the U.S. through the Cleveland, Ohio and Detroit, Michigan ports of entry

On August 12, 2021, Region 5 filed a Consent Agreement and Final Order commencing and concluding a proceeding against Guardian Technologies LLC (Guardian), to resolve fourteen alleged violations of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Specifically, Guardian failed to submit Notices of Arrival to EPA prior to the arrival of device shipments into the United States (at the Cleveland, Ohio and Detroit, Michigan ports of entry), in violation of Section 12(a)(2)(N) of FIFRA.

The Respondent has agreed to pay a penalty of \$124,600. The Respondent has also changed several of its internal processes for imports to ensure future compliance with the FIFRA. Contact: Nidhi O'Meara, primary contact 312-886-0568; Abigail Wesley, additional contact 312-886-0810.

**U.S. EPA, Region 5 issues a SDWA Section 1423(c) Administrative Order on Consent to Vonk Oil and Gas LLC**

On August 11, 2021, the U.S. EPA, Region 5, issued a Safe Drinking Water Act Section 1423(c)(2) Administrative Order on Consent (AOC) to Vonk Oil and Gas, LLC (“Vonk Oil”). The AOC requires Vonk Oil to comply with the Safe Drinking Water Act (SDWA) and to correct the violations that the U.S. EPA found at a Class II injection well owned by Vonk Oil in Manistee County, Michigan. Section 1423(a)(2) of the SDWA authorizes EPA to issue an order to any person found to be in violation of any requirement of an applicable UIC program to comply with such requirement or regulation pursuant to Section 1423(c)(2) of the SDWA. Vonk Oil corrected the following alleged Permit violations: (1) failure to sign and certify reports; (2) failure to report annulus pressure; (3) failure to submit accurate quarterly reports; (4) failure to submit accurate monthly reports; and (5) failure to operate properly by exceeding the permitted maximum injection pressure. In order to comply with the SDWA, the AOC requires and Vonk Oil agrees to: (1) fill the annulus between the injection tubing and the long string casing with a liquid designed to inhibit corrosion, and keep it completely filled with liquid; (2) monitor the annulus quarterly for annulus liquid loss or gain and report the volume changes; (3) retain all monitoring information; (4) submit to EPA, within 30 days of the effective date of the AOC, copies of all monitoring records with its quarterly and monthly reports, for 12 months from the effective date of the AOC; (5) submit to EPA for approval within 90 days of the effective date of the AOC a standard operating procedure (“SOP”) for use in instructing all staff and contractors in monitoring, recording, and reporting injection pressure, annulus pressure, and annulus liquid loss, and to implement the SOP after approval by EPA; and (6) submit to EPA, within 30 days of the effective date of the AOC, records of using vacuum gauges that measure injection and annulus negative pressure. Contacts: Christine Shonnard, Enforcement Officer, Water Enforcement and Compliance Assurance Branch, 312-886-1487 and Stephen Mendoza, Office of Regional Counsel, at 312-886-6852.

**United States District Court for the Southern District of Illinois Lodges Modification to Sauget Area 1 Site CERCLA Cost Recovery Consent Decree between United States and Settling Defendants Pharmacia and Solutia, et al, Sauget, IL**

On August 4, 2021, the United States District Court for the Southern District of Illinois entered a Modification to a cost recovery consent decree (CD) originally signed by the United States and settling defendants (SDs) in 2009. This Amendment makes changes in amounts disbursed into Special and Remediation Accounts under the CD to correct accounting errors that took place during implementation of the 2009 CD’s requirements.

**Background**

In 1999, the United States filed suit to recover its response costs for a removal action at Site G within SA 1, naming the largest PRPs, including Solutia and Pharmacia as defendants. United States v. Pharmacia, Civ. Action No. 99-063 (S.D. Ill.). Paul Sauget, the former mayor of Sauget and the owner/operator of several of the landfills, entered into ability to pay CDs in 2004 and 2008 which set forth stipulated judgments of \$9.2 million for all of SA 1 and \$351,000 for his part of a removal action at Site Q in SA 2. These judgments provided the basis for recovery of insurance proceeds in which Paul Sauget (and his estate after he died) agreed to remit to EPA

95% of any proceeds recovered from insurance policies issued to his waste disposal company. On December 15, 2009, the United States entered into the cost recovery CD with the remaining PRPs at SA 1 that is the subject of this Modification (the 2009 CD). Among these PRPs were the Village of Sauget, which entered into an ability to pay settlement that included payment of 95% of any proceeds recovered from its own insurance policies. The 2009 CD also established Superfund Special Accounts for the purpose of paying for future remediation at SAs 1 and 2. These accounts were called “Remediation Accounts” in contrast to “Special Accounts” which hold funds used to reimburse the Superfund for the United States’ past response costs.

As part of the 2009 CD, the parties agreed that certain future insurance proceeds would be placed in the SA 1 Remediation Account (for disbursement to PRPs implementing the remedy) and to make available funds in that Account for disbursement to any SD that entered into an RD/RA CD, as partial reimbursement for performance of the Work done in accordance with procedures to be established in that RD/RA CD. An RD/RA CD was entered for SA 1 in 2017, and is currently being implemented.

Over the ensuing years, the Estate of Paul Sauget and the Village of Sauget collectively settled their claims against the successors to their insurers, and proceeds from those settlements were placed in Special and Remediation Accounts established under the 2017 RD/RA CD, per the requirements of the 2009 CD. We anticipate that future distributions from the Home Insurance liquidation could be equal to, but not more than, the amount we have received to date. However, during implementation of the 2017 RD/RA CD, accounting errors resulted in having \$800,000 incorrectly added to a Remediation Account established per the 2017 CD. The SA 1 parties are implementing the 2017 RD/RA CD requirements, and if this amount is transmitted to the correct Special Account, the SA 1 SDs will not be able to access this \$800,000 amount. After initial arguments with merits on both sides, the parties agreed to resolve the dispute by splitting the difference evenly – leaving \$400,000 in the Remediation Account and transferring the remainder into the Special Account. To lessen the impact of this accounting error, the modification potentially allows for an additional \$200,000 in future insurance proceeds to go into the SA 1 Special Account via changes in the 2009 CD disbursement formula.

This modification will require court approval, but not public notice and comment, because it does not “enjoin discharges of pollutants.” See 28 C.F.R. § 50.7. Contacts: ORC contact is Thomas J. Martin at 312-886-4273 and the Superfund Division Remedial Project Manager is Stephanie Linebaugh at 312-353-2315. The Department of Justice attorney for this case is Michael Zoeller, at 202-305-1478.

#### **Region 5 Enters into Expedited Settlement Agreement with Metro Community Development, Inc., Flint, Michigan**

On August 2, 2021, EPA filed an Expedited Settlement Agreement (ESA) to commence and conclude an administrative civil penalty action against Metro Community Development, Inc., a non-profit corporation based in Flint, Michigan. Based on EJSCREEN, EPA’s Environmental Justice screening tool, this community may be overburdened and may bear a disproportionate share of risk to their health and their environment from pollution. Metro Community

Development engages in the creation, preservation, and financing of affordable housing; as part of its activities, Respondent acquires and improves vacant residential homes to provide to low-income residents of the community. Metro Community Development usually hires contractors to perform all necessary renovation or repair work on the vacant houses which it acquires. However, on or about August 21, 2020 and on or about September 11, 2020, Metro Community Development had some of its own employees perform paint scraping and similar renovation activities on the exterior of a recently acquired vacant home in Flint, Michigan. As a result, Respondent performed renovation of target housing or child occupied facilities without being certified by EPA under 40 C.F.R. § 745.89 to conduct renovation, repair, and/or painting activities in target housing and/or child-occupied facilities, as required by 40 C.F.R. §§ 745.81(a)(2)(ii) and 745.89(a). These actions violated Section 409 of TSCA, 15 U.S.C. § 2689.

EPA determined that the violation could be resolved with an ESA, and Respondent agreed to the terms of the settlement. The ESA required Respondent to certify its compliance with the TSCA lead-based paint regulations and to pay a civil penalty of \$1,000, which Metro Community Development paid on August 2, 2021. Contacts: Christina Saldivar, Pesticides & Toxics Compliance Section, at 312-886-0755; James J. Cha, Office of Regional Counsel, at 312-886-0512.

**EPA Region 5 Enters into a Consent Agreement and Final Order Resolving FIFRA Violations by Allen Supply Company**

On August 2, 2021, U.S. EPA Region 5 filed a Consent Agreement and Final Order (CAFO) with Allen Supply Company, Inc. The CAFO commences and concludes a Part 22 administrative penalty action under Section 14(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). At the time of the violations, Allen Supply operated a facility in Plover, Wisconsin, for selling farm supplies including pesticides.

EPA alleges Allen Supply violated FIFRA and regulations promulgated thereunder, by failing to 1) maintain batch identification records for pesticides it produced; and 2) record and maintain the serial number or other identifying code of refillable containers of pesticides it distributed or sold. Affected pesticides were Acuron, Harness Max and Roundup PowerMax.

Pursuant to the CAFO, Allen Supply agreed to pay a civil penalty of \$20,250. Allen Supply certified in the CAFO that it is currently complying with FIFRA and FIFRA regulations. The State is aware of and has no objection to this action. Contacts: Kris Vezner, Office of Regional Counsel, 312-886-6827; and Abigail Wesley, Enforcement & Compliance Assurance Division, 312-886-0810.

## Region 6

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Blanchard Refining Company LLC

On August 17, 2021, EPA, Region 6 issued to Blanchard a Notice of Determination ("NOD"), which acknowledged the resolution and compliance of twenty-five (25) Clean Air Act ("CAA") violations disclosed by Blanchard under the EPA Self-Disclosure New Owner Policy and Audit Policy ("Audit Policy"). EPA, Region 6 has been working with Blanchard since 2016 to ensure that these and other disclosed violations were addressed adequately, and to that end, Blanchard has certified to its compliance. Specifically, Blanchard's comprehensive audit covered requirements of the following areas: New Source Review/Prevention of Significant Deterioration ("NSP/PSD"); Leak Detection and Repair ("LDAR"); Refinery Maximum Achievable Control Technology ("MACT") applicability analysis; Risk Management Plan ("RMP"); Texas State Implementation Plan ("Texas SIP"); and Oil Pollution and Prevention all under the CAA. Pursuant to the Audit Policy, EPA, Region 6, in concurrence with EPA, HQs, mitigated all the gravity-based penalty and determined that there was no economic benefit to be collected since whatever gains Blanchard may have realized were offset by far more expenditures invested in the facility, after its acquisition, to exceed Blanchard's compliance with the CAA. This is the second of two NODs issued by EPA, Region 6 to address an aggregate of seventy-four (75) disclosed violations, and EPA Region is in the process of developing an Agreed Order on Consent ("AOC") with Blanchard to address other outstanding disclosed violations that need permits issued by the State of Texas to ensure compliance. Region, 6 aims to have this AOC issued by September 30, 2021. Contact: Marcia Moncrieffe (214) 665-7343.

##### RCRA ACOCs (4) and CAFO (1) - Veritiv Operating Company

On August 16, 2021, EPA Region 6 filed four Administrative Compliance Order on Consent (ACOC) and one Consent Agreement and Final Order (CAFO) under its authority pursuant to the Resource Conservation and Recovery Act (RCRA) at various Veritiv locations in Texas and Louisiana. EPA initiated its investigation in November 2020 at Veritiv's Irving, Texas location as a result of concerns observed as part of the region's data mining endeavors. As a result, EPA issued a Notice of Potential Violation and Opportunity to Confer Letter in December 2020 which opened communication with the Respondent regarding their hazardous waste generation activities, not only at the Irving, Texas location, but also at four other locations within Region 6. It was determined that Veritiv's Texas facilities located in Austin, Texas and Katy, Texas, as well as Louisiana facilities located in Baton Rouge and Shreveport, were not operating within their generator status under RCRA and failing to meet notification requirements as well as applicable generator requirements. The violations were resolved by filing four ACOCs at these locations that require the facilities to return to compliance with RCRA requirements. The Irving, Texas location, which managed larger quantities of hazardous waste also were not operating within its stated generator status and failed to meet notification, as well as applicable generator requirements. The Irving, Texas location violations were resolved with a CAFO issuing a penalty

of \$70,600 that included a compliance order requiring the facility to also return to compliance with RCRA. Contact: Jeffrey Clay (214) 665-7297.

#### **Allied BioScience Status Update**

Status Update: On August 3, 2021, Allied BioScience made a request to move the product SurfaceWise 2, to the Naval Surface Warfare Center - Port Hueneme Division in California, for operational testing and evaluation aboard a Navy ship to fulfill its contractual obligation with the Defense Innovation Unit, a US Department of Defense organization. On Friday August 13, 2021 EPA Region 6 denied movement of the product SurfaceWise 2 to the Naval Surface Warfare Center - Port Hueneme Division and provided guidance to Allied BioScience regarding American Airlines' request to return the product back to Allied BioScience. The Region is preparing to issue letters to the three manufacturers of SurfaceWise 2 to ensure that the Product is not distributed in violation of the Sale, Use and Removal Order. The Agency is working to determine the company's compliance status with the export requirements under FIFRA before granting permission for future exports of the Product. There will be a joint meeting Wednesday August 18, 2021 with EPA Region 6, OECA and OPP to review the export documents submitted by Allied BioScience. On August 9, 2021, Allied BioScience made a request to move the product SurfaceWise 2, as American Airlines has requested to return the product back to Allied BioScience.

Background: On July 8, 2021, Region 6 issued a Stop Sale, Use and Removal Order to Allied Bioscience for their SurfaceWise 2 product in conjunction with OPP revoking their Section 18 emergency exemptions. Under the SSURO, Allied Bioscience must immediately cease the sale, use, or removal of the Product under its ownership, control, or custody, wherever such Product is located, except in accordance with the provisions of the Order unless they receive written approval from EPA for specific circumstances. Contact: Lawrence Pittman (214) 665-8381.

#### **San Jacinto Waste Pits, Southern Impoundment RA UAO**

On August 16, 2021, Respondent International Paper Company requested an opportunity to confer regarding the Unilateral Administrative Order for Remedial Action of the Southern Impoundment, San Jacinto River Waste Pits Superfund site, CERCLA Docket No. 06-05-21, which was signed by the Division Director on August 5, 2021. Contact: Anne Foster (214) 665-2169.

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## Region 7

### Regular Highlights:

#### **Enforcement and Compliance Assurance Issues**

##### **Region 7 Issues 104(e) Information Request to Property Owner at Recycletronics**

On August 18, 2021, EPA issued an information request pursuant to CERCLA § 104(e) to Dan and Maria Goodman, the property owner of the Recycletronics – Akron Farm Superfund Site (Site) to determine their ability to pay for cleanup at the Site. The Recycletronics – Akron Farm Site is a RCRA facility that EPA’s RCRA program referred to SEMD to perform the cleanup of approximately 5.1 million pounds of leaded cathode ray tube glass that a now-defunct electronics recycling company, Recycletronics, abandoned at the Site. Recycletronics’ owner, Aaron Rochester, filed bankruptcy and is unable to pay for cleanup pursuant to EPA’s current ability to pay analysis. After receiving the Goodmans’ response to the information request, EPA will perform an ability-to-pay analysis determining whether the Goodmans are able to pay for the response action. It is anticipated that they will likely be unable to pay for the cleanup, which is estimated to cost \$2.1 million. Contact: Cathie Chiccine, 913-551-7917.

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## Region 8

### Regular Highlights:

#### **Enforcement and Compliance Assurance Issues**

##### **Region 8 and DOJ resolve Oil Spill, Spill Prevention Control and Countermeasures, and Facility Response Plan violations with Noble Energy and Noble Midstream in Weld County, Colorado**

On August 10, 2021, the EPA and the DOJ announced that Noble Energy, Inc., Noble Midstream Partners LP, and Noble Midstream Services, LLC have agreed to pay \$1 million and implement enhanced containment measures and electronic sensors at tank batteries operating in Colorado floodplains. The agreement, lodged as a proposed consent decree with the U.S. District Court for the District of Colorado, resolves Clean Water Act claims at two oil and gas production facilities in Weld County, Colorado. The settlement covers a 2014 unauthorized discharge of 173 barrels of crude oil from the State M36 Facility into the Poudre River and noncompliance with SPCC and FRP regulations issued to prevent and respond to oil spills at the State M36 Facility and the Wells Ranch Facility. Noble Energy remediated the impacted environment following the spill and decommissioned the State M36 tank battery in April 2019. During its investigation of the State M36 spill, the EPA found deficiencies in Noble Energy's Spill Prevention Control and Countermeasure Plan, which Noble Energy has since corrected. The EPA inspected the Wells Ranch Facility on two occasions and found its Facility Response Plan and SPCC Plan did not meet the regulatory requirements. The EPA also conducted two unannounced oil spill response exercises, which Noble Midstream was unable to complete. Noble Midstream has since remedied the SPCC and FRP deficiencies by purchasing additional response equipment, conducting employee training, submitting a revised SPCC Plan, and submitting a revised FRP. Noble Midstream also demonstrated its ability to properly conduct an oil spill response drill and exercise. Contacts: Matthew Castelli (legal) – (303) 312-6491; Donna K. Inman (technical) – (303) 312-6201.

##### **Region 8 NPDES/OPA Enforcement and the DOJ Filed a Complaint and Lodged a Consent Decree in Summit Case**

On August 5, 2021, the Department of Justice filed a Complaint and lodged a Consent Decree with Summit Midstream Partners, LLC, Meadowlark Midstream Company, LLC, and Summit Operating Services Company in the U.S. District Court in North Dakota. The CD addresses alleged Clean Water Act violations by Summit based on the discharge of approximately 703,000 barrels of produced water containing crude oil from a pipeline near Williston, North Dakota into waters of the United States. The State of North Dakota joined the United States as a co-plaintiff, and the consent decree addresses state law claims for injunctive relief, civil penalties, and natural resource damages. Injunctive relief in the CD requires improvements to monitoring and testing of pipelines to prevent future leaks, spill response planning and countermeasures, implementation of a comprehensive environmental management system, training and third-party audits. The CD also requires Summit to pay a civil penalty of \$20 million and \$1.25 million in Natural Resource Damages. Summit has also agreed to resolve its criminal liability arising out of

the discharge by paying a criminal fine of \$15 million and performing restitution that parallels the injunctive relief in the civil settlement. Contacts: Sheldon Muller (legal) – (303) 312-6916; Mike Boeglin (technical) – (303) 312-6250.

**In Region 8, Todd Hennis Files a Takings Claim in the Court of Federal Claims Against the United States in Connection with the EPA’s Use of the Gladstone Property for Ongoing Treatment of Mine Impacted Water from the Gold King Mine**

On August 3, 2021, attorneys working for a property rights nonprofit, the New Civil Liberties Alliance, filed a takings lawsuit against the United States in the Court of Federal Claims. The takings claim is based on the EPA’s continued access to the Gladstone properties within the Bonita Peak Mining District Superfund Site. The EPA has operated an Interim Water Treatment Plant designed to treat mine impacted water flowing out of the Gold King Mine at the Gladstone properties since the fall of 2015. From 2015 through 2020, the EPA accessed the Gladstone properties through verbal permission and written consent for access forms signed by the property owner. Over that period, the agency obtained and paid for two separate appraisals of Mr. Hennis’ property at Gladstone in an attempt to compensate Mr. Hennis for the use of his property. Mr. Hennis rejected both appraisals and refused to enter into a fair market lease of the property when offered by the agency in August of 2020. After rejecting the EPA’s lease offer, Mr. Hennis also refused to sign a long-term consent for access form. As a result, on January 28, 2021, EPA issued an administrative order directing compliance with the agency’s prior request for access. The term of the order is five years, and the order became effective on February 2, 2021. The order instructed Mr. Hennis to notify EPA in writing on or before the effective date if he did not intend to comply with the order. EPA received no such communication from Mr. Hennis. Region 8, through the ORC attorneys assigned to the GKM and BPMD matters, will coordinate with the Environmental Defense Section of the Environmental and Natural Resources Division of DOJ in defense of this lawsuit. ORC will ensure that our ongoing CERCLA response actions and our legal positions in the pending GKM litigation will not be compromised by DOJ’s defense of this takings claim. Contacts: Douglas Naftz (legal) – (303) 312-6942; William Lindsey (legal) – (303) 312-6282; Shawn McCaffrey (technical) - (303) 312-6515.

**Region 8 Sent a Tribal Informational Letter to the Mandan, Hidatsa & Arikara Nation of the Fort Berthold Reservation Regarding Underground Storage Tanks at Three Tribally Owned Facilities**

On August 11, 2021, Region 8 sent the letter to the MHA Nation, The MHA Nation owns the following three facilities that operate underground storage tanks for selling fuel to the public: Eagle’s Landing, 1804 C-Store, and South Shore C-Store. In August 2020, the EPA conducted inspections of the facilities and found multiple areas of concern, including corrosion protection testing, spill/overfill prevention testing, walkthrough inspections, and operator certification. Previous letters to the operators of the facilities did not rectify all of the identified compliance concerns. Contacts: Matthew Castelli (legal) - (303) 312-6491; Roberta Person (technical) - (303) 312-6910.

**Region 8 Issued an Administrative Order to Ciner Wyoming, LLC for SDWA Violations at the Ciner Wyoming, LLC Public Water System, Located in Sweetwater County, Wyoming**

On August 6, 2021, the EPA issued the Order under section 1414 of the SDWA based on a determination that the System violated the EPA's National Primary Drinking Water Regulations. The Order addresses several alleged violations identified from January 2018 to present day. Violations include failure to properly reduce the total organic carbon between the System's source water and its combined filter effluent and exceeding turbidity requirements during January 2018. The Water Division provided the System extensive compliance assistance prior to the SDWA Enforcement Section initiating this enforcement action. The System serves approximately 450 individuals at least 60 days a year. The EPA, rather than the State of Wyoming, took this action because Wyoming has not applied for primary authority to enforce the public water supply protection program. Contacts: Mia Bearley (legal) - (303) 312-6554; Nathan Hicks (technical) - (303) 312-6546.

**Region 8 issues a Consent Agreement and Final Order to resolve Spill Prevention Control and Countermeasures violations with Phoenix Petroleum (formerly Condor Petroleum) for the AB Ericson 1A Tank Battery in Divide County, ND and Arlo Moberg 3 Tank Battery in Williams Counties, North Dakota**

On August 2, 2021, Regional Judicial Officer Katherin Hall issued a Final Order approving a Consent Agreement between Region 8 and Phoenix Petroleum and assessing an administrative penalty of \$50,000 for violations of SPCC regulations at two tank batteries in Divide and Williams Counties, North Dakota. In October 2015, Region 8 conducted SPCC inspections at the two tank batteries and found inadequate SPCC Plans, inadequate secondary containment measures for the storage tanks, and other technical deficiencies. Phoenix Petroleum has since provided the EPA with adequate SPCC Plans and photos of the technical corrections made at the two facilities. Contacts: Peggy Livingston (legal) – (303) 312-6858; Donna K Inman (technical) – (303) 312-6201.

**Region 8 Issued an Administrative Order to the Town of Big Piney for SDWA Violations of at the Town of Big Piney Public Water System, Located in Sublette County, Wyoming**

The Order was issued August 12, 2021. EPA issued the Order under section 1414 of the SDWA based on a determination that the System violated EPA's National Primary Drinking Water Regulations. The Order addresses several alleged violations identified from January 2017 to December 2018. Violations include failure to monitor the System's water volatile organic chemicals and inorganic contaminants. The Order requires the Respondents to monitor inorganic contaminants within 30 days of receiving the Order and to report these results to the EPA and notify the public of violations. The Water Division provided the System extensive compliance assistance prior to the SDWA Enforcement Section initiating this enforcement action. The System serves approximately 652 individuals at least 60 days a year. The EPA, rather than the State of Wyoming, took this action because Wyoming has not applied for primary authority to enforce the public water supply protection program. Contacts: Mia Bearley (legal) - (303) 312-6554; Christina Carballal (technical) - (303) 312-6046.

**Region 8 ECAD CAA 112(r)/EPCRA Enforcement Section Issued an Expedited Settlement Agreement to Seely Oil Company for Violations of the Risk Management Plan Regulations**

On July 27, 2021, the CAA 112r/EPCRA Enforcement Section issued an ESA to Seely Oil Company, located in Cortez, Colorado. RMPs under the Chemical Accident Prevention regulations at 40 CFR Part 68, are required to be submitted to the EPA every five years by facilities with large quantities of hazardous substances. The information contained in the RMP ensures facilities are aware of the hazards, requires they address the hazards with safety measures, and ensures adequate response capabilities for accidents that may occur. On May 6, 2020, the RMP team conducted an off-site compliance monitoring activity at the Seely Oil Company's Cutthroat "B" Gas Plant Facility. The activity and follow-up investigation review determined that the facility failed to review and update their RMP submission and failed to correct the RMP emergency contact information as required. The facility has corrected the violations and the ECAD closed out this matter with an ESA that included payment of a \$2,400 penalty. Contacts: Marc Weiner (legal) – (303) 312-6913; Dan Webster (technical) – (303) 312-7076.

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## Region 9

### Regular Highlights:

#### **Enforcement and Compliance Assurance Issues**

##### **Environmental Group Files Ninth Circuit Challenge to EPA's Approval of Arizona DEQ NSR SIP**

On August 13, 2021, the Center for Biological Diversity filed a petition for review with the Ninth Circuit Court of Appeals under the Clean Air Act challenging EPA's June 16, 2021 approval of a New Source Review State Implementation Plan revision submitted by the Arizona DEQ. Contact: Julie Walters, ORC (415) 972-3892.

##### **Region 9 Settles CAA Section 112(r) Violations with Hawaiian Ice Company, Honolulu, Hawaii**

In August 2021, Region 9 entered into a Consent Agreement and Final Order resolving Section 112(r) General Duty Clause violations at Hawaiian Ice's facility, which produces ice using an anhydrous ammonia refrigeration system. Hawaiian Ice will pay an \$82,613 penalty. Contacts: Jon Owens, ORC (415) 972-3620; Don Nixon, ECAD (415) 972-3123.

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## Region 10

### Regular Highlights:

#### Enforcement and Compliance Assurance Issues

##### Region 10 Settles with Resch Renovation & Design LLC for TSCA Violations (Wenatchee, WA)

On August 16, 2021, EPA Region 10 issued an expedited settlement agreement and final order to Resch Renovation & Design LLC located in Wenatchee, Washington, for violations of TSCA's Lead-Based Paint Renovation, Repair, and Painting (RRP) Rule occurring in Wenatchee, Washington. EPA Region 10 alleged Resch Renovation & Design LLC failed to become RRP firm certified prior to performing renovation work on a pre-1978 residential property as required by the RRP Rule. Respondent agreed to pay a penalty amount of \$200. Contact: Kim Farnham, (206) 553-6697.

##### Region 10 Settles with PROBuild Contractors LLC for TSCA Violations (Vancouver, WA)

On August 18, 2021, EPA Region 10 issued an expedited settlement agreement and final order to PROBuild Contractors LLC located in Portland, Oregon, for violations of TSCA's Lead-Based Paint Renovation, Repair, and Painting (RRP) Rule occurring in Vancouver, Washington. EPA Region 10 alleged that PROBuild Contractors LLC failed to become RRP firm certified prior to performing renovation work on a pre-1978 residential property as required by the RRP Rule. Respondent agreed to pay a penalty amount of \$1,000. Contact: Maria Tartaglia, (206) 553-1128.

##### Region 10 Settles with JCM Custom Remodeling, LLC for TSCA Violations (Portland, OR)

On August 18, 2021, EPA Region 10 issued an expedited settlement agreement and final order to JCM Custom Remodeling, LLC located in Vancouver, Washington for violations of TSCA's Lead-Based Paint Renovation, Repair, and Painting (RRP) Rule occurring in Portland, Oregon. EPA Region 10 alleged that JCM Custom Remodeling, LLC failed to become RRP firm certified prior to offering to perform renovation work on a pre-1978 residential property as required by the RRP Rule. Respondent agreed to pay a penalty amount of \$200. Contact: Maria Tartaglia, (206) 553-1128.

##### Region 10 Settles with CNC Construction and Plumbing LLC for TSCA Violations (Portland, OR)

On August 18, 2021, EPA Region 10 issued an expedited settlement agreement and final order to CNC Construction and Plumbing LLC located in Rhododendron, Oregon, for violations of TSCA's Lead-Based Paint Renovation, Repair, and Painting (RRP) Rule occurring in Portland, Oregon. EPA Region 10 alleged that CNC Construction and Plumbing LLC failed to become RRP firm certified prior to offering to perform renovation work on a pre-1978 residential property as required by the RRP Rule. Respondent agreed to pay a penalty amount of \$200. Contact: Maria Tartaglia, (206) 553-1128.